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Syn. No. 19  
2/25/03

TO: SUPERVISOR YVONNE BRATHWAITE BURKE, Chair  
SUPERVISOR GLORIA MOLINA  
SUPERVISOR ZEV YAROSLAVSKY  
SUPERVISOR DON KNABE  
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: LLOYD W. PELLMAN   
County Counsel

RE: **James Sokalski's Marina Public Participation Concerns**

On February 25, 2003, your Board approved the Department of Beaches and Harbors' ("Department") recommendation to approve an Option Agreement for the County to acquire all of Parcel 77W and a portion of Parcel 44U ("Option Agreement") in Marina del Rey from the existing lessee of those parcels. You also directed our office to report back on issues that were raised by James Sokalski, who expressed concerns regarding the public notice given by the Board and the Small Craft Harbor Commission ("Commission") of their consideration of the involved Option Agreement and, more generally, the public's right to fully participate in County decisions affecting Marina local coastal planning and development.

We have reviewed Mr. Sokalski's oral testimony given during your February 25, 2003, Board meeting, as well as the extensive written materials that Mr. Sokalski submitted at that time. We have concluded that the public meeting notice given for the Commission's and Board of Supervisors' consideration of the Option Agreement complied with all applicable laws. We further believe that the public's opportunity to participate in the County's consideration of that item and other Marina del Rey development and leasing items complies with the California Coastal Act's stated goal of promoting full public participation in decisions affecting planning and development in the coastal zone.

## DISCUSSION

The Commission holds its regular meetings on the second Wednesday of every month. Among other things, at such meetings, the Commission considers items that the Department intends to recommend to the Board of Supervisors and decides whether or not to endorse the Department's recommendations. At the Commission's regular meeting on February 12, 2003, the Director of Beaches and Harbors announced to the Commission and the persons in attendance that he proposed a special meeting later in the month for the Commission's consideration of the proposed Option Agreement, since it could not be finalized in time to be placed on the regular meeting agenda. The Commission members indicated an informal preference for the proposed special meeting to be held on February 24, 2003. Accordingly, an announcement was made at that point that a special meeting was likely going to be scheduled for February 24 on the proposed Option Agreement.

The Ralph M. Brown Act requires that written notice of a special meeting be provided to the members of the legislative body and any media organization which has requested notice of special meetings of that body at least 24 hours in advance of the special meeting. The notice must also be posted at least 24 hours prior to the special meeting at a location freely accessible to members of the public.

On February 19, 2003, the Department posted notices of the February 24, 2003, Commission special meeting to consider the Option Agreement at all three regular public posting locations used for Commission meetings. The Department provided written notice and the special meeting agenda to the *Argonaut* (the local newspaper servicing Marina del Rey) on that same day, posted the agenda and the Department's proposed Option Agreement Board letter on the Department's website, and hand delivered copies of those materials to the local Marina del Rey library. Additionally, the Department mailed the special meeting notice and agenda materials to all commissioners, ten other newspapers, two magazines, one cable television network, and all persons on its extensive mailing list.

Numerous people attended the February 24, 2003, special meeting of the Commission, and approximately 24 of them, including Mr. Sokalski, testified regarding the proposed Option Agreement. The meeting itself lasted approximately two and one-half hours.

Given the above, we conclude that the notice procedures utilized for the February 24, 2003, special meeting not only exceeded the legal requirements contained in the Ralph M. Brown Act, but also provided substantial opportunity to the public to provide input to the Commission regarding the proposed Option Agreement.

Likewise, we believe that your Board's consideration of the Option Agreement at your February 25, 2003, meeting also met all legal notice requirements and provided an opportunity for all interested members of the public to provide their testimony on the item prior to your action.

In anticipation of the Commission's consideration of the Option Agreement on February 24, the Department arranged for the item to be placed on your Board's February 25, 2003, agenda, using the standard agenda procedures. The Department's Board letter specifically indicated that the Commission was considering the matter on February 24 and that the Department would advise the Board of the Commission's recommendation prior to Board consideration of the item.

The Department's Board letter for this item appeared on the regular agenda for your February 25, 2003, meeting. Under standard Board procedures, the agenda was posted and made available along with the Department's Board letter more than 72 hours in advance of the meeting in compliance with the Brown Act. The agenda and Board letter were also posted on the County's website in accordance with standard procedures. At the Board meeting, all persons asking to address the Board on the item were given an opportunity to do so before your Board took action. Mr. Sokalski and two other persons presented testimony before your Board acted on the item.

Accordingly, we believe that all legal notice requirements were also met with respect to your Board's consideration of the Option Agreement, and public participation occurred.

Mr. Sokalski also expresses concern on a more general level that the County's consideration of matters affecting Marina del Rey planning and development does not conform to California Coastal Act policies providing for full public participation. He cites Public Resources Code section 30006, which states that the planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.

The Coastal Act does not include any specific guidelines for local government implementation of section 30006's pronouncements, and no court has identified any specific procedures that must be followed by cities and counties to achieve section 30006's goals.

Nonetheless, and contrary to Mr. Sokalski's position, we believe that the County's consideration of Marina del Rey planning and development matters provides wide and substantial opportunity for public participation, consistent with the spirit and letter of Coastal Act policies on this topic.

First of all, the 1996 adoption of the Amended Marina del Rey Coastal Development Program ("LCP") which identifies the land use policies, goals, implementation mechanisms for Marina del Rey planning and development, and the parameters for second-generation Marina development was preceded by substantial public hearings before the Regional Planning Commission, the Board of Supervisors, and the California Coastal Commission. Legal challenges to the adequacy of the plan and the procedures for its adoption were rejected by the courts. Additionally, the California Coastal Commission has commenced its five-year review of the Marina LCP in accordance with Coastal Act policies, and that process will be accompanied by opportunity for public input and testimony.

Each specific Marina development proposal which is considered by the County is, itself, subject to multiple public meetings and hearings. Initially, the Department's request for authority to release a Request for Proposals for the potential development of a parcel is subject to consideration at public meetings before both the Commission and your Board. In the event the County's evaluation team and Department receive a proposal that they wish to recommend to your Board for specific consideration, that request is also preceded by public meetings before the Commission and your Board.

Once your Board decides to pursue a specific Marina development proposal, the specific proposal is subject to review at noticed public meetings/hearings before the Marina del Rey Design Control Board and the Regional Planning Commission. Depending on the nature of the land use entitlements sought, such proposals are further subject to public hearings before your Board and the Coastal Commission. The specific lease documents for such development proposals are independently subject to consideration at further public meetings before the Commission and your Board. Each of the above-described public meetings/hearings is subject to Brown Act notice requirements, and public testimony is allowed on each occasion.

In his written materials, Mr. Sokalski includes legal briefs he submitted in a challenge to the Coastal Commission's approval of the Marina development proposal that your Board has approved for the Bar Harbor and Deauville Marina projects. Among other things, Mr. Sokalski challenged the Coastal Commission's approval by contending that the Coastal Commission's public hearing procedures and practices were also not consistent with Public Resources Code section 30006. However, the trial court ruled against Mr. Sokalski on that issue, and the case is on appeal. No court has yet found merit in Mr. Sokalski's challenges to Marina del Rey development proposals on public participation or other grounds against either the County or the Coastal Commission.

Mr. Sokalski also suggests that to provide the widest opportunity for public participation in Marina planning and development activities, members of the public should be entitled to review all materials considered by staff, ask questions of staff, review draft reports regarding Marina planning and development efforts, and make comments on such drafts before they are finalized. We do not believe that such steps must be a mandatory element of the County's Marina planning and development procedures. However, as a practical matter, it is our understanding that members of the public can and do have informal discussions with Department of Beaches and Harbors personnel on an ongoing basis, and members of the public have the opportunity to ask questions and receive answers concerning planning and development decisions during the various public meetings and hearings that are referenced above. Additionally, the Department's public records are available for review by any member of the public.

If you have any questions concerning this matter, please contact either me, Assistant County Counsel John Krattli at 974-1838, or Principal Deputy County Counsel Richard Weiss at 974-1921.

LWP:RDW/

c: David E. Janssen  
Chief Administrative Officer

Violet Varona-Lukens, Executive Officer  
Board of Supervisors

Stan Wisniewski, Director  
Department of Beaches and Harbors